

ADDENDUM TO SUPPLEMENT 9 TO ATTACHMENT 2.6-A

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE: NEVADA

1902(f) AND 1917(c) OF THE SOCIAL SECURITY ACT

Transfer of Resources

The agency provides for a period of ineligibility for nursing facility services, a level of care in a medical institution equivalent to that of nursing facility services, and for Home Based Waiver services when it is determined an institutionalized individual or their spouse disposed of resources for less than fair market value to become or remain eligible for Medicaid.

Transfers occurring within 36 months before or after application (or institutionalization, if later) or assets placed in an irrevocable trust within 60 months are evaluated.

The period of ineligibility shall begin with the month in which the transfer took place and continue for a period of time which is the number of months determined by dividing the uncompensated value by \$4,583 (the statewide average monthly cost of care in a nursing facility for a private patient).

Eligibility can be re-evaluated if the individual secures the return of the transferred resource or if the individual receives further compensation. The uncompensated value will be reduced by the amount of additional compensation received.

An institutionalized individual is defined as an individual who is an inpatient in a nursing facility, who is an inpatient in a medical institution, for whom payment is made based on a level of care provided in a nursing facility or who is a Home and Community Based Service recipient.

For purposes of Section 1917(c) of the Act, the term "resources" has the meaning given such term in Section 1613 of the Act, without regard to the exclusion described in subsection (a)(1) thereof.

An individual shall not be determined ineligible for medical assistance if:

1. the resources transferred was a home and title to the home was transferred to:
 - a. the spouse of such individual;

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ADDENDUM TO SUPPLEMENT 9 TO ATTACHMENT 2.6-A (continued)

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE: NEVADA

1902(f) AND 1917(c)
OF THE SOCIAL SECURITY ACT

- b. a child of such individual who is under age 21 or is blind or permanently and totally disabled;
 - c. a sibling of such individual who has an equity interest in such home and who was residing in the individual's home for a period of at least one year immediately before the date the individual becomes institutionalized;
 - d. a child of such individual (other than a child described in item "b" above) who was residing in the individual's home for a period of at least two years immediately before the date the individual becomes institutionalized and who provided care to the individual which permitted the individual to reside at home rather than an institution or facility.
- 2. the resources were transferred to or from (or to another for the sole benefit of) the individual's spouse, or to the individual's blind/disabled child;
 - 3. a satisfactory showing is made the individual intended to dispose of the resources either at fair market value or for other valuable consideration or the resources were transferred exclusively for a purpose other than to qualify for medical assistance;
 - 4. it has been determined a denial of eligibility would work an undue hardship against the individual.

Undue hardship is when there is no means, legal or otherwise, by which the individual is able to have the resource returned to his/her ownership or receive further compensation. The individual is otherwise eligible for Medicaid, and without Medicaid the individual would be forced to go without life-sustaining medical care as determined by an individual licensed to practice medicine in the State of Nevada.

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APPENDIX 1 TO SUPPLEMENT 9 OF ATTACHMENT 2.6-A

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: Nevada

SECTION 1917(c)(2)(D)

Transfer of Resources

An institutionalized spouse who (or whose spouse) transferred resources for less than fair market value shall not be found ineligible for nursing facility services, for a level of care in a medical institution equivalent to that of nursing facility services, or for home and community-based services where the State determines that denial of eligibility would work an undue hardship under the provision of Section 1917(c)(2)(D) of the Social Security Act.

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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: NEVADA

TRANSFER OF ASSETS

1917(c) The agency provides for the denial of certain Medicaid services by reason of disposal of assets for less than fair market value.

1. Institutional individuals may be denied certain Medicaid services upon disposing of assets for less than fair market value on or after the look-back date.

The agency withholds payment to institutionalized individuals for the following services:

Payments based on a level of care in a nursing facility;

Payments based on a nursing facility level of care in a medical institution;

Home and community-based services under a 1915 waiver.

2. Non-institutionalized individuals:

N/A The agency applies these provisions to the following non-institutionalized eligibility groups. These groups can be no more restrictive than those set forth in section 1905(a) of the Social Security Act:

Agency withholds payment to non-institutionalized individuals for the following services:

N/A Home health services (section 1905(a)(7));

N/A Home and community care for functionally disabled and elderly adults (section 1905(a)(22));

N/A Personal care services furnished to individuals who are not inpatients in certain medical institutions, as recognized under agency law and specified in section (1905(a)(24).

N/A The following other long-term care services for which medical assistance is otherwise under the agency plan:

3. Penalty Date --

The beginning date of each penalty period imposed for an uncompensated transfer of assets is:

X the first day of the month in which the asset was transferred;

___ the first day of the month following the month of transfer.

4. Penalty Period - Institutionalized Individuals --

In determining the penalty for an institutionalized individual, the agency uses:

X the average monthly cost to a private patient of nursing facility services in the agency;

___ the average monthly cost to a private patient of nursing facility services in the community in which the individual is institutionalized.

5. Penalty Period - Non-institutionalized Individuals --

The agency imposes a penalty period determined by using the same method as is used for an institutionalized individual, including the use of the average monthly cost of nursing facility services;

N/A Imposes a shorter penalty period than would be imposed for institutionalized individuals, as outlined below:

6. Penalty period for amounts of transfer less than cost of nursing facility care --

- a. Where the amount of the transfer is less than the monthly cost of nursing facility care, the agency:

X does not impose a penalty;
— imposes a penalty for less than a full month, based on the proportion of the agency's private nursing facility rate that was transferred.

- b. Where an individual makes a series of transfers, each less than the private nursing facility rate for a month, the agency:

X does not impose a penalty;
— imposes a series of penalties, each for less than a full month.

7. Transfers made so that penalty periods would overlap --
The agency:

— totals the value of all assets transferred to produce a single penalty period;
X calculates the individual penalty periods and imposes them sequentially.

8. Transfers made so that penalty periods would not overlap --
The agency:

X assigns each transfer its own penalty period;
— uses the method outlined below:

9. Penalty periods - transfer by a spouse that results in a penalty period for the individual --

- a. The agency apportions any existing penalty period between the spouses using the method outlined below, provided the spouse is eligible for Medicaid. A penalty can be assessed against the spouse, and some portion of the penalty against the individual remains.

The remaining penalty period existing for the individual, at the time the spouse is determined eligible for Medicaid, will be divided in one-half and that one-half period of time will apply to the individual and the spouse.

- b. If one spouse is no longer subject to a penalty, the remaining penalty period must be served by the remaining spouse.

10. Treatment of income as an asset --

When income has been transferred as a lump sum, the agency will calculate the penalty period on the lump sum value.

☐ The agency will impose partial month penalty periods.

When a stream of income or the right to a stream of income has been transferred, the agency will impose a penalty period for each income payment.

☐ For transfer of individual income payments, the agency will impose partial month penalty periods.

☒ For transfers of the right to an income stream, the agency will use the actuarial value of all payments transferred.

☐ The agency uses an alternate method to calculate penalty periods, as described below:

11. Imposition of a penalty would work an undue hardship --
The agency does not apply the transfer of assets provisions in any case in which the agency determines that such an application would work an undue hardship. The agency will use the following procedures in making undue hardship determinations:

Notice to applicant/recipient an undue hardship exception exists will be given at the point when the opportunity to rebut the presumption a transfer of assets occurred.

If undue hardship is claimed, the applicant/recipient will be responsible for providing convincing evidence the disqualification would cause an undue hardship. The evidence must include:

- a. A written statement from the client/authorized representative stating the reason they feel undue hardship applies.
- b. Verification, if possible, there is no means, legal or otherwise, by which the client is able to have the resource transferred back to his ownership or receive further compensation.
- c. The client's relationship, if any, to the person(s) to who the resource was transferred.

Once the rebuttal and all the necessary information to substantiate the claim is received, the ECS must send the information to the Chief of Eligibility and Payments requesting a decision on whether undue hardship exists. The request must be accompanied by the following:

- The name and case number of the applicant/recipient;
- The application date;
- The date the client entered the institution; and
- A brief description of the circumstances of the transfer and why it would be an undue hardship if the penalty were imposed.

A decision whether an undue hardship waiver will be granted will be made within forty-five (45) days from the date the undue hardship request is received by the Chief of Eligibility and Payments, unless extenuating circumstances exist. An adverse determination may be appealed if received by the hearing officer within ninety (90) days from the date of the undue hardship decision.

The following criteria will be used to determine whether the agency will not count assets transferred because the penalty would work an undue hardship:

Undue hardship is when there is no means, legal or otherwise, by which the individual is able to have the resource returned to his/her ownership or receive further compensation. The individual is otherwise eligible for Medicaid, and without Medicaid the individual would be forced to go without life-sustaining medical care as determined by an individual licensed to practice medicine in the State of Nevada.